

Department of Resources Recycling and Recovery

SCOPE OF WORK

Pending Receipt of Sufficient Funds, a Study to Compare and Contrast the Ability of Captive Insurance and Other Financial Assurance Mechanisms to Provide for Costs of Closure, Postclosure Maintenance, and Corrective Action at Solid Waste Landfills

I. INTRODUCTION/OBJECTIVES

Assembly Bill (AB) 480 (Solorio, Statutes of 2012, Chapter 713) temporarily revises the conditions under which the use of captive insurance would be allowed as a financial assurance mechanism for solid waste landfills, while limiting its use to providing not more than 50 percent of an owner's and operator's financial assurance obligation for closure, postclosure maintenance and corrective action. AB 480 requires the Department of Resources Recycling and Recovery (CalRecycle) to submit a report to the Legislature no later than January 1, 2017, that assesses the ability of captive insurance to serve as an effective financial assurance mechanism.

II. WORK TO BE PERFORMED

This study will only commence if CalRecycle determines that it has received sufficient private funds to conduct the study and to complete the report required by Public Resources Code (PRC) Section 43601.2. In addition, CalRecycle will consider and disclose any past or current relationship that the contractor has had with an owner or operator of a solid waste landfill that may use captive insurance as allowed under PRC Section 43601(e)(2).

The contractor will be required to review all currently available financial assurance mechanisms as identified in Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 6 (27 CCR Section 22200 et seq.). The results of this analysis will be provided to CalRecycle in a written and electronic report format identifying the pros and cons of each financial assurance mechanism, the associated fees to be encountered by the regulated public and the administrative expenses expected to be absorbed by CalRecycle in review and acceptance of the financial mechanisms. Specifically, the contractor will focus on the aspects of captive insurance as a financial assurance mechanism and apply to any active or closed landfill within California and:

- assess the pros and cons of various financial assurance mechanisms;
- provide a summary of any ratings reports, audit findings, or other information regarding an owner or operator using captive insurance to provide financial assurance;

- assess whether captive insurance, as a financial assurance mechanism, provides adequate financial assurance to provide for the costs of solid waste landfill closure, postclosure maintenance, and corrective action;
- assess the level of assurance provided by captive insurance relative to other mechanisms permitted;
- assess any financial liability the state may assume if financial assurance mechanisms fail; and
- provide recommendations for ensuring solid waste landfill closure, postclosure maintenance, and corrective action costs are properly assured to protect the state from closure, long-term postclosure and corrective action costs in the event that a landfill owner or operator fails to meet its legal obligations.

III. TASKS IDENTIFIED

To meet the requirements and to fulfill the terms of the contract, the contractor shall complete the following four tasks. These tasks outline a general approach for meeting the requirements; however, alternative approaches for some or all of the tasks may be proposed as part of the competitive bid process, if they meet or exceed the requirements and are adequately demonstrated in the proposed work plan. CalRecycle, in agreement with the contractor, may modify the work plans based on new information gathered during the contract term.

Evaluate applicable financial assurance mechanisms for closure, postclosure maintenance, and corrective action financial exposures for both active and closed landfills.

Task 1: Finalize the work plan provided in the bid, indicating the steps that will be taken in completing each task (tasks 2 through 4), including for each step the personnel involved, the projected timeframe, and cost. In the event sufficient private funds are not received on or before July 1, 2013, the contractor shall identify in the work plan timeline the latest date by which sufficient private funds must be received to allow sufficient time to commence and complete all of the required tasks. The work plan will require Contract Manager review and approval throughout the process, including bi-weekly reporting of work performed to the CalRecycle Contract Manager (Contract Manager) by e-mail, and timely submittal of outlines and draft documents prior to submittal of deliverables.

Deliverable: Detailed work plan to be reviewed and approved by Contract Manager.

Task 2: Review existing financial mechanisms identified in 27 CCR Section 22200 et seq. (all financial mechanisms permitted pursuant to PRC Section 43601).

1. Include analysis of appropriate application of current mechanisms for closure, long-term (beyond 30-year) postclosure maintenance, and corrective action financial exposures at both active and closed landfills.
2. Compare and contrast financial mechanisms for safety, security and the timely accessibility of funds.

3. Include a summary of any ratings reports, audit findings, and other information regarding an owner or operator using captive insurance to provide financial assurances.
4. Include a review and analysis of other states' policy/regulations on the use of captive insurance at active and closed landfills, as well as a summary of explanations from states that do not allow captive insurance.
5. Include analysis of whether captive insurance provides adequate financial assurance to provide for the costs assured.
6. Include analysis of the level of financial assurance provided by captive insurance relative to other financial assurance mechanisms permitted by PRC Section 43601.

Deliverable: Detailed report of financial assurance mechanisms consisting of a list of applicable financial assurance mechanisms appropriate for closure, long-term postclosure maintenance, and corrective action financial exposures at active and closed solid waste landfills. The report must include the completed analysis of all financial mechanisms within 27 CCR Section 22200 et seq. and must compare the assurance provided by captive insurance relative to all other mechanisms permitted. The report must be submitted in both written and electronic forms using a computer software format acceptable to CalRecycle. All deliverables will be reviewed and approved by the Contract Manager.

Task 3: Utilizing CalRecycle's existing working model for statewide financial exposure due to long-term postclosure maintenance and corrective action at active and closed solid waste landfills that are required to meet the financial assurance requirements contained in 27 CCR Section 22200 et seq.

1. Review the existing working model and recommend any amendments to the probabilities of failure contained within the model for landfill owners and operators as well as providers of financial assurance mechanisms.
2. Identify the current financial liability due to closed and operating landfills within California.
3. Identify any financial liability the state may assume if the financial mechanisms permitted pursuant to PRC Section 43601 fail.

Deliverable: Detailed report of mechanisms consisting of the working model of the statewide exposure to California to cover all long-term postclosure maintenance and corrective action costs at active and closed solid waste landfills. The report will include analysis of the working model, the parameters for amending the model, and a thorough evaluation of the current financial liability due to closed and operating landfills within California, and effectiveness of financial mechanisms to relieve the state of the financial liability the state may assume if the financial mechanisms permitted pursuant to PRC Section 43601 fail. The report must be submitted in both written and electronic forms using a computer software format acceptable to CalRecycle. All deliverables will be reviewed and approved by the Contract Manager.

Task 4: Develop recommendations for ensuring solid waste landfill closure, postclosure maintenance, and corrective action costs are properly assured to protect the state from

closure, long-term postclosure and corrective action costs in the event that a landfill owner or operator fails to meet its legal obligations. In preparing any recommendations for ensuring costs are properly assured to protect the state, providers of financial mechanisms will be consulted for the industry perspective:

1. Consult with insurance industry and banking representatives.
2. Provide draft financial assurance mechanism language to the Contract Manager for review.
3. Identify pricing process for financial assurance mechanism(s) – if a recommendation for one or more new mechanism(s) results from the study.
4. Estimate average anticipated premium cost to each operator for any recommended new financial assurance mechanism resulting from the study.

Deliverable: Recommendations to ensure solid waste landfill closure, postclosure maintenance, and corrective action costs are properly assured to protect the state from closure, long-term postclosure and corrective action costs in the event that a landfill owner or operator fails to meet its legal obligations. If a recommendation for one or more new financial assurance mechanism(s) is developed as a result of the study, contractor must submit both a draft and final financial assurance mechanism(s) acceptable to the insurance industry and/or banking industry and CalRecycle, that will be available from the insurance market and/or financial market and that will provide financial coverage to all solid waste landfills within California. The recommendations and financial assurance mechanism(s) must be provided in both written and electronic formats using computer software format acceptable to CalRecycle. The final financial assurance mechanism(s) must also include the anticipated pricing structure. All deliverables will be reviewed and approved by the Contract Manager.

IV. CONTRACT/TASK TIME FRAME

Once funded, services can begin in Fiscal Year 13-14 to ensure that the study is completed and action by CalRecycle can proceed in a timely manner. The contract is anticipated to take approximately three years, including final review and approval of all contract deliverables. The necessity for the 36 month time-frame of the contract is to encompass the requirements of PRC Section 43601.2 requiring the submittal of a report to the Legislature on or before January 1, 2017.

The following provisions will be included in the Terms and Conditions or Special Terms and Conditions of the Contract:

V. COPYRIGHT PROVISION

The contractor shall assign to the Department of Resources Recycling and Recovery (CalRecycle) any and all rights, title and interests to any copyrightable material or trademarkable material created or developed in whole or in any part as a result of this Agreement, including the right to register for copyright or trademark of such materials. The contractor shall require that its subcontractors agree that all such materials shall be

the property of CalRecycle. Such title will include exclusive copyrights and trademarks in the name of CalRecycle.

VI. WASTE REDUCTION AND RECYCLED-CONTENT PRODUCT PROCUREMENT

In the performance of this Agreement, contractor shall use recycled content, used or reusable products, and practice other waste reduction measures where feasible and appropriate.

Recycled Content Products: All products purchased and charged/billed to CalRecycle to fulfill the requirements of this contract shall be Recycled Content Products (RCPs), or used (reused, remanufactured, refurbished) products. All RCPs purchased or charged/billed to CalRecycle to fulfill the requirements of the contract shall have both the total recycled-content (TRC) and the postconsumer content (PC) clearly identified on the products. Specific requirements for the aforementioned purchases and identification are discussed in the Terms and Conditions of the Contractual Agreement under Recycled-Content Product Purchasing and Certification.

The contractor should, at a minimum, ensure that the following issue(s) are addressed, as applicable to the services provided:

WRITTEN DOCUMENT PROVISION

All documents and/or reports drafted for publication by or for CalRecycle in accordance with this contract shall adhere to CalRecycle's *Guidelines For Preparing CalRecycle Reports (available upon request)* and shall be reviewed by CalRecycle's Contract Manager in consultation with one of CalRecycle's editors.

In addition, these documents and/or reports shall be printed double-sided on one hundred percent (100%) recycled-content paper. Specific pages containing full-color photographs or other ink-intensive graphics may be printed on photographic paper. The paper should identify the postconsumer recycled content of the paper (i.e., "printed on 100% postconsumer paper"). When applicable, the contractor shall provide the contract manager with an electronic copy of the document and/or report for CalRecycle's uses.

To the greatest extent possible, soy ink instead of petroleum-based inks should be used to print all documents.